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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 8, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Amend Prior Board Action of August 28, 2009 (D-9), Consent to Assign General Lease No. S-3875, Paradise Auction, Ltd., Assignor, to Alternative Energy Marketing, Inc., Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-2-50:93.

BACKGROUND:

The Board approved the consent to assign General Lease No. S-3875, Paradise Auction, Ltd., Assignor to Alternative Energy Marketing, Inc., Assignee (Exhibit A) on August 28, 2009.

GL S-3875 was issued under the provisions of the special disaster legislation (Act 32, Session Laws of Hawaii 1962) allowing direct leases to victims of natural disasters. The original Lessees were owners of a feed-sales business destroyed as a result of the 1960 tsunami that struck the Hilo bay front.

Documentation was sent to the Department of the Attorney General for drafting of the Consent to Assignment form. However, this was disapproved because of an unauthorized easement and a required change in the character of use. Upon review of the files, it was discovered that although the Board had approved the consent to assign on three previous occasions, there was no specific language authorizing a change in the character of use as the original terms of the lease required from the second to the third Assignee, as a change of use occurred at this time. The character of use reads as follows;

21. Character of use. That the Lessee shall be required to use the leased land for the first five (5) years of the term of the lease for a feed-sales business; provided, however, that the Lessee may devote or place said demised premises to a use other than the feed-sales business, the prior written consent of the Board, which consent shall not be unreasonably or arbitrarily withheld; provided, further, that should the Lessor consent to a change in the character of the use, it shall be upon such terms and conditions as set by the Lessor. The Board before acting upon a request by the Lessee for a change in use shall consult with the Lessee and any assignee, mortgagee and sublessee if any. The Board shall also consider market and economic conditions affecting said change.

As a change in the character of use had already occurred as a result of the second assignment of lease, staff recommends the Board consent to the change in the character of use from 'feed-sales business' to the current allowed use under the County of Hawaii zoning code, ML-20, limited industrial. Staff believes the change in use will benefit the State by allowing a wider range of use and thereby making the property more appealing for future leasing.

It was also discovered that a Grant of Easement for utility purposes is located on the property. This easement, dated May 3, 1966, was between Ranch Bruno, the original Lessee, and the Hawaii Electric Light Company (HELCO) and was without consent from the Board. Staff is working with HELCO in obtaining a Grant of Easement with the State for the existing utility easement.

Staff is therefore recommending that the Board amend a portion of its prior action of August 28, 2009 (D-9), by consenting to the change in the character of use from feed-sales business to the allowable use under the current County of Hawaii zoning code, ML-20, limited industrial use.

RECOMMENDATION: That the Board:

1. Amend the prior action of August 28, 2009 (D-9) by adding

RECOMMENDATION 4. Consent to the change in the character of use from feed-sales business to the current allowable county zoning code, ML-20, limited industrial use;

2. All terms and conditions listed in its August 28, 2009 (D-9) approval to remain the same.

Respectfully submitted,



Gordon C. Heit
Land Agent

APPROVED:



Laura H. Thielen, Chairperson



EXHIBIT "A"
August 28, 2009 (D-7)
Land Board Submittal

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 28, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawai'i

Consent to Assign General Lease No. S-3875, Paradise Auction, Ltd., Assignor, to
Alternative Energy Marketing, Inc., Assignee, Waiakea, South Hilo, Hawaii, Tax
Map Key: 3rd/2-2-50:93.

APPLICANT:

Paradise Auction, Ltd., as Assignor, to Alternative Energy Marketing, Inc., a Hawaii
corporation whose business and mailing address is 50 Maile Street, suite A33, Hilo,
Hawaii 96720, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kanoelehua Industrial Lots situated at Waiakea, South
Hilo, Hawaii, identified by Tax Map Key: 3rd/2-2-50:93, as shown on the attached map
labeled Exhibit A.

AREA:

.689 acres, more or less.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON ^{MB}
August 28, 2009

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Industrial purposes.

TERM OF LEASE:

55 years, commencing on August 12, 1966 and expiring on August 11, 2021. Last rental reopening occurred on August 12, 2006; next rental reopening is scheduled for August 12, 2016.

ANNUAL RENTAL:

\$26,400.00 payable in quarterly amounts of \$6,600.00.

CONSIDERATION:

\$ 275,000.00.

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

ASSIGNEE:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

REMARKS:

Under the provisions of the special disaster legislation (Act 32, Session Laws of Hawaii 1962), the Department of Land and Natural Resources was authorized to enter into direct negotiation, leases of public lands to victims of natural disasters. General Lease No. S-3875 was issued to Harold Sadao Tanouye (for himself) and Harold Sadao Tanouye as Trustee for Harold Tadashi Tanouye, Raymond Hideo Tanouye, and Kenneth Susumu Tanouye, dba Ranch Bruno. This lease without the option to purchase was approved by the Board at its meeting of August 12, 1966 under agenda item F-12.

At its meeting of July 7, 1967 under agenda item F-1, the Board consented to the assignment of lease from Harold Sadao Tanouye (for himself) and Harold Sadao Tanouye as Trustee for Harold Tadashi Tanouye, Raymond Hideo Tanouye, and Kenneth Susumu Tanouye, dba Ranch Bruno, as Assignor to Feed-Well, Inc. as Assignee.

Further at its meeting of September 9, 1988, agenda item F-1-g, the Board consented to the assignment of lease from Feed-Well, Inc. as Assignor to Laupahoehoe Transportation Company, Inc., as Assignee.

At its meeting of April 11, 1997, under agenda item D-13 the Board consented to the assignment of lease from Laupahoehoe Transportation Company, Inc. to Paradise Auction, Ltd., the current Lessee.

The Assignee, Alternative Energy Marketing, Inc., plans to utilize the property for the assembly and distribution of solar panels and solar heating units. The Assignee anticipates minimal alterations to the existing structure and plans to make use of the entire property.

At its meeting of October 27, 2006, under agenda item D-2 (Exhibit B), the Board consented to the agreement of sale between Paradise Auction, Ltd. as vendor to Alternative Energy Marketing, Inc., as the vendee. The purchase price was \$275,000.00 with a breakdown as follows; \$5,000.00 was put into an escrow account and an additional \$45,000.00 will be added upon the closing of escrow. Then, interest only payments at 7% (simple interest) on the balance of \$225,000.00 were to be paid for a period of twenty-four (24) months. The final payment of \$225,000.00 was to be paid on the twenty-fifth (25th) month. The terms and conditions of this agreement of sale have been satisfied as noted in the enclosed memorandum (Exhibit C).

The Lessee is compliant with the terms and conditions of the lease with regards to rent, property and liability insurance and performance bond. The Assignee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The last rental reopening occurred in August 2006. The next reopening is scheduled for August 2016. There are no outstanding rental reopening issues at this time.

August 28, 2009


Staff is recommending that the Board consent to the assignment of General Lease S-3875 from Paradise Auction, Ltd. as Assignor to Alternative Energy Marketing, Inc., as Assignee.


RECOMMENDATION:

That the Board consent to the assignment of General Lease No. S-3875 from Paradise Auction, Ltd., as Assignor, to Alternative Energy Marketing, Inc., as Assignee, subject to the following:


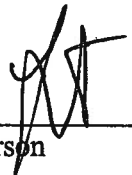

1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gordon C. Heit
Land Agent 

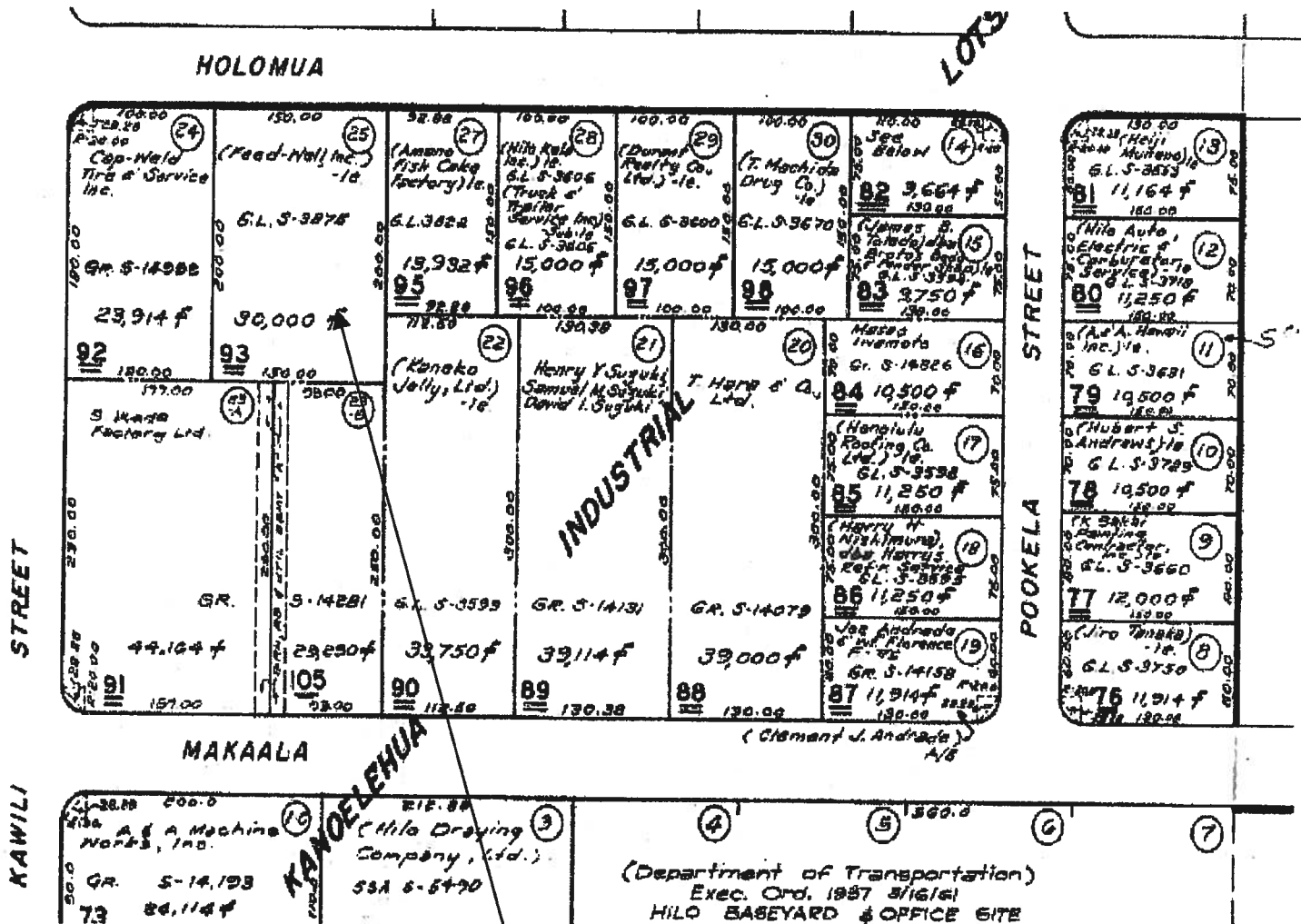
APPROVED FOR SUBMITTAL:

Laura H. Thielen, Chairperson

EXHIBIT A

TMK: 3RD/2-2-50:93



SUBJECT PROPERTY

EXHIBIT B

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 27, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Consent to Sale of Leasehold by Agreement of Sale for General Lease No. S-3875, Kanoiehua Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-2-50:93.

SALE OF LEASEHOLD BY AGREEMENT OF SALE:

Paradise Auction, Ltd., as Seller, to Alternative Energy Marketing, Inc., a Hawaii corporation whose business and mailing address is 50 Maile Street, suite A33, Hilo, Hawaii 96720, as Buyer.

LOCATION:

Portion of Government lands of Kanoiehua Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-2-50:93, as shown on the attached map labeled Exhibit A.

AREA:

.689 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Industrial purposes.

TERM OF LEASE:

55 years, commencing on August 12, 1966 and expiring on August 11, 2021. Last rental reopening occurred on August 12, 2006; next rental reopening is scheduled for August 12, 2016.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
October 27, 2006

D-2

ANNUAL RENTAL:

\$26,400.00 payable in quarterly amounts of \$6,600.00.

REMARKS:

Under the provisions of the special disaster legislation (Act 32, Session Laws of Hawaii 1962), the Department of Land and Natural Resources was authorized to enter into direct negotiation, the lease of public lands to victims of natural disasters. General Lease No. S-3875 was issued to Harold Sadao Tanouye (for himself) and Harold Sadao Tanouye as Trustee for Harold Tadashi Tanouye, Raymond Hideo Tanouye, and Kenneth Susumu Tanouye, dba Ranch Bruno. This lease without the option to purchase was approved by the Board at its meeting of August 12, 1966 under agenda item F-12.

At its meeting of July 7, 1967 under agenda item F-1, the Board consent to the assignment of lease from Harold Sadao Tanouye (for himself) and Harold Sadao Tanouye as Trustee for Harold Tadashi Tanouye, Raymond Hideo Tanouye, and Kenneth Susumu Tanouye, dba Ranch Bruno, as Assignor to Feed-Well, Inc. as Assignee.

Further at its meeting of September 9, 1988, agenda item F-1-g, the Board consented to the assignment of lease from Feed-Well, Inc. as Assignor to Laupahoehoe Transportation Company, Inc., as Assignee.

Again at its meeting of April 11, 1997, under agenda item D13 the Board consented to the assignment of lease from Laupahoehoe Transportation Company, Inc. to Paradise Auction, Ltd., the current Lessee.

The Buyer, Alternative Energy Marketing, Inc., plan to utilize the property for the assembly and distribution of solar panels and solar heating units. They anticipate minimal alterations to the existing structure and plan to make use of the entire property.

The financing of the acquisition will be by way of an agreement of sale between the Assignor and Assignee. The purchase price is \$275,000.00 with a breakdown as follows; \$5,000.00 was put into an escrow account and an additional \$45,000.00 will be added upon the closing of escrow. Then, interest only payments at 7% (simple interest) on the balance of \$225,000.00 will be paid for a period of twenty-four (24) months. The final payment of \$225,000.00 will be paid on the twenty-fifth (25th) month.

The Lessee is compliant with the terms and conditions of the lease with regards to rent, property and liability insurance and performance bond. The Assignee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The last rental reopening occurred in August 2006. The next reopening is scheduled for August 2016. There are no outstanding rental reopening issues at this time.

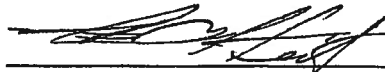
Staff is recommending that the Board consent to the Sale of Leasehold by Agreement of Sale of General Lease S-3875 from Paradise Auction, Ltd. as Seller to Alternative Energy Marketing, Inc., as Buyer.

RECOMMENDATION:

That the Board consent to the Agreement of Sale of General Lease No. S-3875 from Paradise Auction, Ltd., as Seller, to Alternative Energy Marketing, Inc., as Buyer, subject to the following:

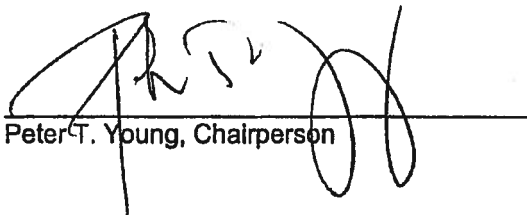
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. All obligations, to include but not limited to lease rental owed the State, real property taxes owed the County of Hawaii, insurance requirements, utility charges, etc. shall continue to be the responsibility of the current Lessee, Paradise Auction, Ltd. until such time that the terms and conditions of the Agreement of Sale have been fulfilled;
3. Review and approval by the Department of the Attorney General; and
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

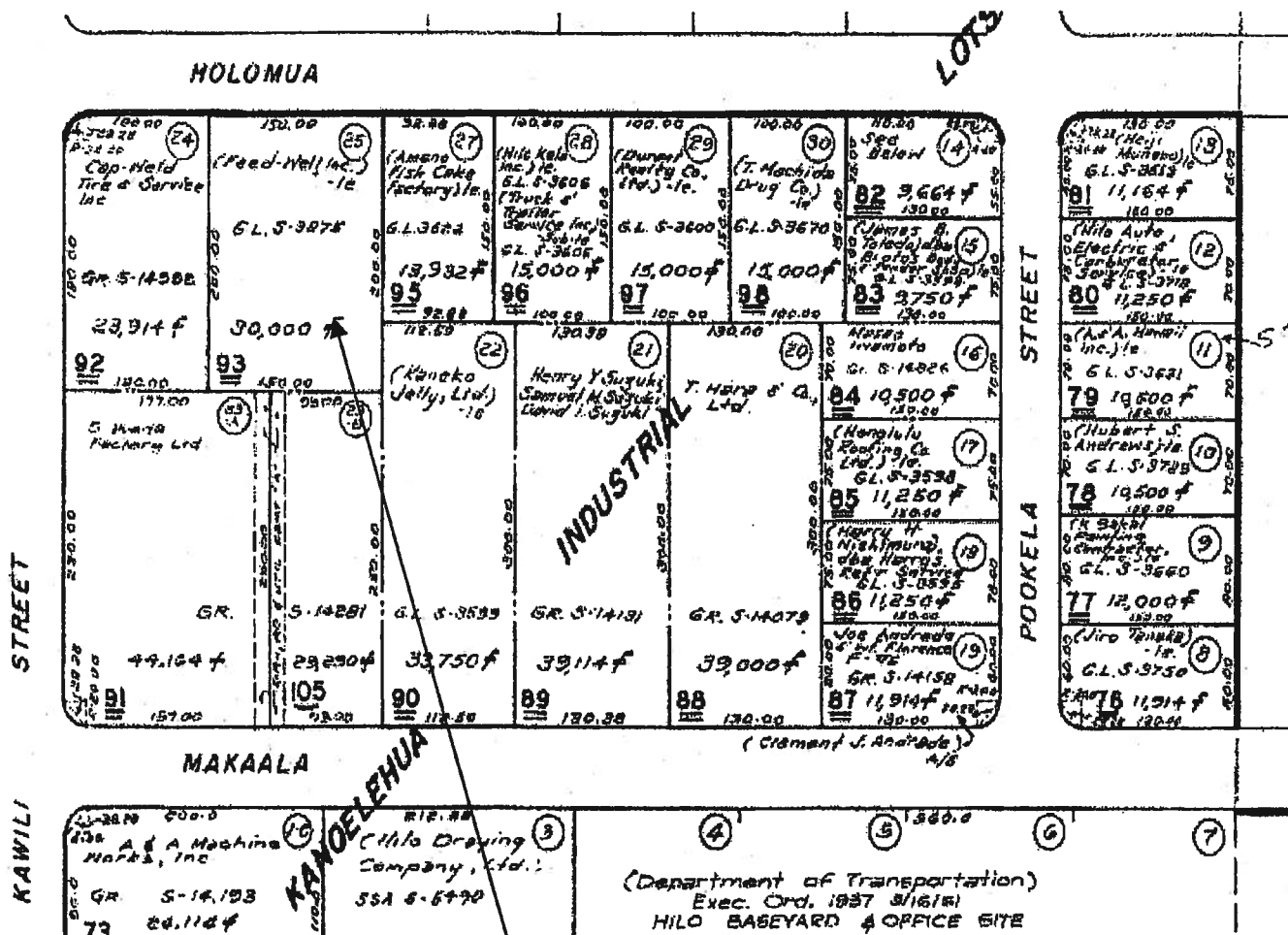


Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson

TMK: 3RD/2-2-50:93



SUBJECT PROPERTY

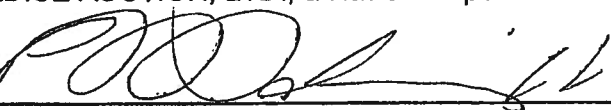
MEMORANDUM

TO WHOM IT MAY CONCERN:

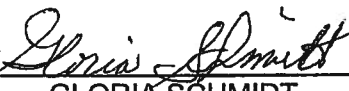
The undersigned parties hereby agree, acknowledge and confirm that all of the terms and conditions contained in that certain Agreement of Sale by and between PARADISE AUCTION, LTD., a Hawaii corporation, as Vendor, and ALTERNATIVE ENERGY MARKETING, INC., a Hawaii corporation, as Vendee, dated October 12, 2006, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-217213, have been satisfied and the subject transaction is complete.

PARADISE AUCTION, LTD., a Hawaii corporation

BY

E. MIKE SCHMIDT
Its President

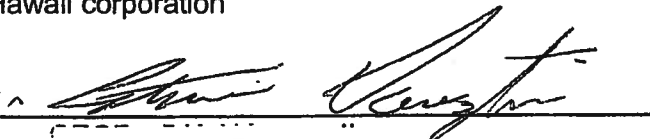
BY

GLORIA SCHMIDT
Its Vice President

VENDOR

ALTERNATIVE ENERGY MARKETING, INC.,
a Hawaii corporation

BY

STEVEN FAINSZTEIN
Its Vice President

VENDEE

Approved as to Form

/s/ RAYMOND K. HASEGAWA /s/ 06/12/2009
RAYMOND K. HASEGAWA
Attorney at Law